

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JANUARY CUNNINGHAM,)	
)	
Plaintiff,)	
)	
)	
vs.)	CASE NO. 3:10-0358
)	JUDGE NIXON/KNOWLES
)	
)	
WINDRIVER MANAGEMENT GROUP,)	
LLC, d/b/a THE LODGE SPORTS PUB)	
and FRANK CALDWELL,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

On October 5, 2010, the undersigned entered an Order (Docket No. 11) which granted Defendants' previously-filed Motion to Compel (Docket No. 10) and which ordered Plaintiff to respond to a set of Interrogatories and Requests for Production that Defendants had served on June 4, 2010. That Order provides in relevant part as follows:

For the foregoing reasons, Plaintiff shall respond to the Interrogatories and Requests for Production of Documents on or before October 20, 2010. If Plaintiff fails to respond, the undersigned will recommend that this action be dismissed.

Pursuant to Fed. R. Civ. P. 37(a)(5)(A), Plaintiff shall pay Defendants' reasonable expenses incurred in making the instant Motion, including attorneys' fees. Defendants' counsel may file an appropriate Affidavit with regard to the amount of those fees.

Docket No. 11, p. 1.

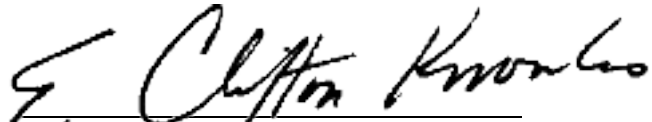
On October 21, 2010, Defendants filed a "Notice of Plaintiff's Failure to Comply with Court Order." Docket No. 12. That Notice essentially states that Plaintiff had not responded to

the Interrogatories and Requests for Production, nor had Plaintiff's counsel contacted Defendants' counsel with regard to the Interrogatory Responses.

Defendants' counsel also submitted an Affidavit establishing that Defendants incurred fees in the total amount of \$420 with regard to the Motion to Compel. That amount represents 2.4 hours at a rate of \$175 per hour. The Affidavit establishes that this expense was necessary "due to Plaintiff's failure to respond to discovery." Docket No. 13, p. 2. The Court concludes that the hourly rate and the number of hours set forth in the Affidavit are reasonable.

For the foregoing reasons, the undersigned recommends that this action be DISMISSED WITH PREJUDICE. The undersigned further recommends that Defendants be awarded their attorneys' fees in the amount of \$420.00.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days after service of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have fourteen (14) days after service of any objections filed to this Report in which to file any response to said objections. Failure to file specific objections within fourteen (14) days of service of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *See Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L. Ed. 2d 435 (1985), *reh'g denied*, 474 U.S. 1111 (1986); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.



E. Clifton Knowles
United States Magistrate Judge